

	Operational General Order	4.05 – Electronic Data Management	PAGE 1 OF 15
	Virginia Beach Police Department General Order Chapter 4 – Reporting and Fiscal Management		08/11/2015 ORIGINATOR/REVIEW Operations Division
	DISTRIBUTION ALL	CALEA: 41.3.8. , 41.3.9, 83.2.2	
	BY THE AUTHORITY OF THE CHIEF OF POLICE: <i>James A. Coover</i>		

Purpose

The purpose of this order is to provide guidelines concerning the storage and management of electronic video and photographic data files in the Police Department.

Policy

The Virginia Beach Police Department utilizes a number of technologies for the purpose of capturing, recording and documenting evidence or potential evidence as a part of its operations. These include, but are not limited to, In-Car Cameras, TASER Cams, ALPR (Automatic License Plate Reader) units, Digital SLR (single-lens reflex) and Point & Shoot Cameras, Handheld Video Cameras, and Interview Room and Surveillance Camera Systems.

The Virginia Beach Police Department utilizes In-Car Cameras in many of the vehicles used as emergency response or general patrol vehicles for documenting patrol related activities. The TASER Cams are utilized as a part of the TASERs issued to department members for documenting the deployment and use of Electronic Control Devices (ECDs). The ALPR units installed on emergency response or general patrol vehicles incorporate cameras for capturing and documenting every license plate that the system scans and compares to a known wanted vehicle database. Members of the department’s Forensic Unit are assigned Digital SLR cameras for the purposes of capturing and documenting photographic evidence at crime scenes and other department members, such as Crime Scene Officers, are assigned Digital Point & Shoot Cameras for capturing and documenting photographic evidence at crime scenes not requiring a Forensic Technician. The department’s Forensic Unit also utilizes Handheld Video Cameras to record and document evidence on video from crime scenes. Other department members utilize Handheld Video Cameras assigned to individual commands for the purposes of conducting surveillance operations and similar assigned tasks. Interview rooms in the department are equipped with video camera systems to record and document both audio and video for interviews and interrogations. The department also has surveillance camera systems used at various commands and at the oceanfront for the purposes of monitoring and recording activities for areas covered by those cameras.

Commands shall ensure that the camera-equipped cars are assigned on all shifts and that the equipment is being used properly. All in-car cameras shall be used in accordance with department training and the manufacturer's guidelines and instructions. They shall be used for official business only and in accordance with the Code of Virginia.

All videotapes, DVDs, video files and photographic images or audio recordings taken/made in the course of the employee's duties are the property of the Virginia Beach Police Department and may be made available for viewing by appropriate city agencies. ANY recording (video, audio, photographic), regardless of who owns the equipment used to make the recording, that is made by an employee while in the course of performing their duties (even if it is not their duty to make such a recording) is the property of the City of Virginia Beach and subject to FOIA. Disclosure of the contents of the videotapes, DVDs and video files to others shall be made in accordance with the provisions of the Virginia Freedom of Information Act, or pursuant to the appropriate legal process. The Office of Internal Affairs shall coordinate such disclosures.

All video tapes, DVDs, video files and photographic images or audio recordings will be retained and properly destroyed in accordance with the [Library of Virginia Records Retention and Disposition Schedule](#) after being downloaded by the command's video/photographic file administrator(s), or included as an attachment to an official department file.

Any photograph or recording that is used for investigatory purposes or is used in court as evidence must be maintained for 75 years in accordance with the Library of Virginia Records Retention and Disposition Schedule.

Video and Photographic Systems

In-Car Cameras (CALEA 41.3.8 A)

In-car cameras should be used to record DUI arrests, traffic stops, pursuits, and any other police situation for which the camera operator believes their use would be appropriate. When used to record other than routine matters, the operator shall advise their Supervisor as soon as practical. In cases where the operator is uncertain as to whether the camera should be utilized, he/she should consult a supervisor. Once the recording equipment is started, the operator shall not, in any manner, alter or erase anything that has been recorded on the video files, nor stop or otherwise interfere with the recording of the incident except as expressly permitted by this General Order.

Camera Operation

Only officers trained in the operation of in-car cameras may use the equipment. The officer must never attempt to perform any maintenance on the camera. Any malfunctions or problems should be reported to a supervisor.

At the beginning of each shift, officers using a system that records directly to a removable media storage device shall activate the system to record a system test file. This will allow the officers to check the operation of both system microphones and cameras. When using the camera to record suspected impaired drivers, the officer should attempt to provide a brief, verbal narration of events as they unfold.

The equipment will be installed to automatically begin recording whenever an officer activates his emergency lights. If the incident does not justify the use of the in-car camera system, such as responding to calls for service, the officer shall manually deactivate the camera. A brief narrative as to why the camera is being deactivated shall be placed on the recording; officers will need to activate either the internal or wireless microphone to do this. The in-car camera system may also be started manually

by the officer without the need to have emergency equipment turned on. If possible, officers should attempt to record the incident, either visually, audibly or both, as soon as they suspect they may become involved in an arrest/summons situation. Once the recording has begun it shall not be deactivated by the officer during the specific encounter. Whenever an arrest/summons situation is recorded on removable media storage device the officer shall document the recording of the video file on the IBR form and/or DUI check sheet and notify their supervisor of the recorded video file.

If an officer is involved in a use of force incident and the incident is documented on removable media storage device the officer shall document the recording of the video file in the narrative portion of the BlueTeam Use of Force report and notify their supervisor of the recorded video file. Supervisors will facilitate the attachment of the video file to the UOF report in BlueTeam.

Video Retention and Disposal (CALEA 41.3.8 B, C)

Files generated from the digital in car camera system shall be tagged with one of the designated file “tags” for ease of identification and automatic deletion by the software data management system. The designated tags, file retention and deletion schedule are as follows:

- **Responding/Other** – This category contains test files, video footage such as an officer’s emergency response to calls for service, traffic stops where no charges were made, and other footage that does not fall under the remaining four categories. This category will be set for automatic deletion from the system after 30 days.
- **Pursuits** – This category contains video footage where the responding officer was involved in a pursuit. All files that contain pursuit footage will be transferred either electronically or via disk to the IA Pro Vehicle Pursuit Report which is generated via BlueTeam. Files that the officer intends to use as evidence in court must be transferred to a disc and submitted to Property and Evidence; additionally, the officer may include a copy in the case file. This category will be set for automatic deletion from the system after 18 months.
- **DUI** – This category contains video footage of Arrests related to the charge of Driving under the Influence. Officers may request copies from the file administrator to be transferred to a disk for court purposes. This category will be set for automatic deletion from the system after 18 months.
- **Misdemeanor Stops** – This category contains video footage of all traffic stops that result in a misdemeanor charge (to include physical arrests, criminal summonses and traffic summonses) other than for DUI. Officers may request copies from the file administrator to be transferred to a disk for court purposes. This category will be set for automatic deletion from the system after 18 months.
- **Felony Stops** – This category contains video footage of all traffic stops that result in a felony charge. Officers must submit a copy of these files to Property and Evidence and may include a copy in the case file. The Property & Evidence copy must be submitted regardless of the officer’s determination of the evidentiary worth of the file. This category will be set for automatic deletion from the system after 18 months.

Video File Review Process

The Commanding Officer of the organizational component utilizing in-car cameras shall ensure that supervisors regularly review selected video files to assess both procedural and officer safety training needs.

Officers should advise their supervisors of any unique situations they have recorded which may be useful for training purposes. Supervisors should evaluate the merits of using a recorded incident for viewing by officers not involved in the specific incident. Only the officer's Commanding Officer may approve the use of recorded footage for roll call training. The Office of Professional Development and Training should be notified of any video recording that may have some "training value."

TASER (ECD) Cameras (Cams)

Every TASER assigned to a department member (except for SWAT) is equipped with a TASER Cam (Camera). The TASER Cam is intended to document each deployment of the TASER from the time the TASER is turned on. There is approximately a 1 to 1 ½ second delay from the time the TASER is activated to the time the TASER Cam begins recording due to the time required for the TASER Cam to initialize.

Each time an officer deploys and activates their assigned TASER, the TASER Cam captures audio and video files of the deployment. The TASER also captures data (metadata) related to the deployment. The audio, video and metadata files are maintained in the TASER and TASER Cam's internal memory up to the 2,000 most recent activations.

The designated video file administrator or their designees are responsible for downloading the audio, video and metadata files to the designated storage device(s). These files cannot be deleted or altered from the TASER and TASER Cam's internal memory. When the internal memory reaches its storage capacity it will automatically overwrite the oldest files with the new files.

The TASER Cam will capture the audio, video and metadata files for every deployment and activation, including the daily spark tests by the assigned officers.

The video file administrator shall be responsible for maintaining these video and data files and providing access to these files for authorized personnel. All TASER Cam files involved in a Use of Force will be transferred either electronically or via disk to the IA Pro Use of Force Report which is generated via BlueTeam. The video file administrator shall be responsible for copying any required video files in their entirety to DVD for an officer requiring the video file as evidence for court. The recorded DVD will then be vouchered and submitted to Property and Evidence.

ALPR (Automatic License Plate Recognition) (CALEA 41.3.9)

It is the policy of the Virginia Beach Police Department that no ALPR shall be used, intentionally or otherwise, in a manner that might compromise the legitimate privacy concerns of private citizens.

Definitions

Automated License Plate Reader (ALPR) – Computer assisted equipment, either fixed or mobile, used to identify and compare license plate numbers.

ALPR vehicle: A police vehicle equipped with a system designed to scan and check license plates for stolen status or security threats and then stores the information.

Hit – Alert from the License Plate Reader system that a scanned license plate number may be in the NCIC (National Crime Information Center) and VCIN (Virginia Criminal Information Network) database for a specific reason including, but not limited to, being related to a stolen car, wanted person, domestic violence protective order or terrorist-related activity. A hit can also occur based on a scanned license plate that has been manually entered into the database, based on a broadcast BOL (Be On the Lookout).

Hot List: Vehicle extract file obtained from the NCIC for use with License Plate Readers that identifies license plate numbers of interest to law enforcement.

Hot List Download: The method by which the hot list data is transferred to the reader vehicle computer.

Policy/Guidelines for Use (CALEA 41.3.9 A)

An ALPR Program Manager shall be designated by the Deputy Chief of Operations. The Program Manager shall be responsible for establishing protocols for:

- System Access
- Training of Personnel
- Data Collection
- Data Storage
- Data Retention
- Conducting monthly and annual audits detailing hits from ALPR and types of clearances for these cases. Monthly audits should be detailed during COMPSTAT meetings while the annual audit shall be included in annual operations division goals and objectives report outs.

ALPR systems operated by the Virginia Beach Police Department shall be deployed for law enforcement or Homeland Security purposes only, to include, but not limited to: locating stolen vehicles, carjacked vehicles, stolen license plates, wanted or missing persons, or vehicles on the Hot List; canvassing of areas surrounding recent crimes or for stolen vehicles or stolen tags that may be connected to crime scenes; collecting license plate numbers in areas where intelligence indicates that criminal activity may occur; and analyzing license plate numbers observed frequently at critical infrastructure sites, national icons, or sensitive or secure areas.

1. Prior to usage, the operator of the ALPR shall check the equipment for functionality and camera calibration.

2. When in operation, the ALPR scans license plate images without operator action, thus allowing the operator to perform routine patrol operations.
3. The operator receives an audible alert tone and an image of the license plate if a license plate matches one from the current Hot List. The operator must verify that the “captured” license plate matches the wanted license plate. A hit confirmation must be conducted through the Communications Dispatcher.
4. In the event an alert is received on an occupied vehicle, the member must notify Communications and receive confirmation of wanted information prior to initiating a traffic stop. In all instances the member will proceed according to established policy.
5. Any hits on persons listed as “violent gang members” or persons listed on the “terrorist watch list” will provide information to the officers on their status but does not constitute reasonable suspicion to stop a vehicle. This information should be treated like any other intelligence information provided to the officer. If the data collected is determined to be valuable to another law enforcement agency the data may be shared but must clearly be for law enforcement purposes only. The ALPR Program Manager or designee shall be responsible for determining the type of data and best method for disseminating the data to another law enforcement agency. Any data disseminated shall be documented in a log kept in the ALPR network drive.
6. Any significant incident or arrest utilizing an ALPR shall be documented electronically by the operator prior to the end of shift and forwarded to the operator’s supervisor and Departmental ALPR Program Manager. This can be done via e-mail notification.
7. ALPR operators may search past images to determine if a particular license plate was photographed. This feature may be utilized at the request of members or other law enforcement officers for investigative purposes.
8. When not in use, all ALPR equipment will remain in the assigned vehicle. The ALPR trained officer is required to log in to the ALPR system at the beginning of their shift and log out of the ALPR system at the conclusion of their shift.
9. Special requests for ALPR equipped vehicles for planned patrol operations shall be made to the lieutenant or captain approving the patrol plan. The use of an ALPR and any information resulting from the ALPR use shall be documented in the After Action Report and forwarded to the ALPR Program Manager. This information shall be entered into the designated ALPR network folder.
10. ALPR systems are fixed and shall not be altered or adjusted without supervisory approval.
11. System maintenance, repairs, and cleaning shall comply with manufacturer’s specifications and will only be accomplished by designated personnel.

12. Each command that utilizes and ALPR system shall be responsible for documented quarterly inspections of these systems.

Data Security and Access (CALEA 41.3.9 B)

Commands shall ensure that the ALPR cars are assigned on all shifts and that the equipment is being used properly. All ALPR units shall be used in accordance with department training and the manufacturer's guidelines and instructions and shall be used for criminal justice/official business only in accordance with the Code of Virginia. Only certified ALPR operators, administrators and designated COMIT Service Administrators shall have access to and operate the ALPR system. ALPR operators will conduct all operations using vendor-supplied software on the assigned vehicle's mobile computer interfacing with the ALPR's processing unit. All software and hardware used with the ALPR shall be approved by ComIT or their designee.

Misuse of ALPR may subject the operator, his or her supervisor and/or the agency to criminal, civil and/or administrative sanctions under VCIN/NCIC guidelines.

Hot List and Hot List download

- A. Hot list updates shall only be performed by approved personnel. The Hot List file will be downloaded from the secure Virginia State Police controlled website to the designated network server. The updated Hot List file will automatically be pushed across the secure city network to the mobile computer(s) in the ALPR equipped vehicle(s). The trained ALPR user should confirm that the ALPR system is running the most current Hot List through the Car Systems Application Operations Menu.
- B. The "hot list" download on the designated network server is to remain protected and confidential as is any information received from the NCIC and VCIN files. Any transfer of data to another shall be considered "secondary dissemination", which is not permitted with the ALPR reader system.

Training (CALEA 41.3.9 C)

The ALPR Program Manager shall be responsible for proper selection of personnel to attend ALPR training. Training in the operation of any ALPR will be conducted according to the specific ALPR manufacturer guidelines. All training must be documented and on file with Professional Development and Training. Upon completion of training each new operator will be provided and username and password for the ALPR System. Professional Development and Training will maintain a list of qualified ALPR operators.

All operating members must have VCIN B Level certification.

Data Storage and Retention (CALEA 41.3.9 D)

The vendor server will upload the data recorded by the ALPR daily from the mobile computer and transfer the data to a designated file server. In addition, the designated electronic data administrator(s) will download the license plate image files and the NCIC/VCIN information associated with any stolen/wanted vehicle or stolen license plate captured by the ALPR using a designated USB Flash Drive in the event of a network failure. This data will be transferred to the designated storage device(s) and deleted from the USB Flash Drive immediately following the successful transfer of the data files. If the ALPR is used specifically to gather intelligence information, all of the electronic data obtained should be downloaded to the Crim-intel Database, as opposed to the designated file server.

Currently, any data collected shall be retained for 24 hours before being purged. If data collected is determined to be linked to a specific crime, the data may be retained for a period longer than 24 hours. The length of time this data will be stored will be determined the Virginia Record's Retention Schedule. Requiring the video file as evidence for court. The recorded DVD will then be vouchered and submitted to Property and Evidence.

ALPR material used for court testimony as evidence will be transferred to a DVD and submitted to Property and Evidence until the case is fully adjudicated to its final conclusion.

The ALPR Program Manager shall serve as a video file administrator. The manager shall be responsible for maintaining any video files and providing access to these files for authorized personnel. The program manager shall be responsible for copying any required video files in their entirety to DVD for an officer

Crime Scene Documentation and Evidence Photography**Photography and Video Taping (CALEA 83.2.2)**

Any member who captures images for the purpose of documenting evidence shall follow the directions outlined in the Evidence Collection and Handling Field guide. Although directives indicate that all images will be captured on Department approved media it is recognized that members may record images on personal devices due to exceptional circumstances. All such images and recordings become the property of the City of Virginia Beach PD. All photographic images recorded during the official capacity of duties will be treated in the same manner for evidentiary purposes.

All images captured by Department members will be submitted to the Forensic Services Unit at the conclusion of the shift. FSU will be responsible for archiving all case information in accordance with FSU Order 1.03.

Department Video Cameras

In addition to the Forensic Unit, there are various units in the department that utilize digital video cameras. These cameras are used to record activity related to investigations, or evidence of criminal activity.

The cameras record to a variety of media, including but not limited to, video tapes, hard drives and removable storage media. All video files and still images, for video cameras with that capability, will only be recorded on department approved media.

The designated command video file administrator shall be responsible for all recorded video files from each video camera. The video file administrator shall be responsible for maintaining these video files and providing access to these files for authorized personnel. The video file administrator shall be responsible for copying any required video files in their entirety to DVD for an officer requiring the video file as evidence for court. The recorded DVD will then be vouchered and submitted to Property and Evidence.

Property and Evidence shall maintain all submitted tapes or DVDs as evidence until the case is fully adjudicated to its final conclusion.

Videotapes or DVDs that contain footage of significant criminal activity that require copying for dissemination in furtherance of the investigation or prosecution of the case may be copied and disseminated by the Property & Evidence Unit. The copy(s) will be made of the entire videotape or DVD and be certified as exact duplicates of the original and will be issued in the same manner as all other videotapes or DVDs held as evidence. The original of a videotape or DVD that has been duplicated will not be checked out except for court or unusual circumstances. Only the Chief of Police, or designee, may authorize duplication of less than a complete videotape or DVD.

Interview Rooms

Interview rooms in the department are equipped with audio and video recording equipment. Each audio and video system records to a video tape, DVR (Digital Video Recorder), or hard drive. These recording systems are utilized to capture interviews, or interrogations, including any evidence or confessions obtained during an interview or interrogation.

All interviews that are recorded in designated Detective Bureau interview rooms are automatically stored to a temporary storage device. The investigating detective is responsible for submitting Form PD 90 Detective Bureau Interview Report to the designated command video file administrator in order to receive copies of the interview and request the video to be archived to a permanent, secure storage device. Once the detective receives a copy of the interview it may be disseminated to authorized personnel (CAO, defense, assisting law enforcement agencies)

The video file administrator shall be responsible for maintaining these video files and providing access to these files for authorized personnel. This video will be used as the source document and considered the copy of record

Interviews that are recorded using other devices such as VCRs, DVD recorders, or other non-networked devices as described above will require multiple copies of the interview. One copy of the interview should be maintained in the case file and a second copy should be maintained in a secure location by the designated command video file administrator.

Surveillance Camera Systems

Several commands in the department are equipped with surveillance camera systems to view and record activity occurring both inside and outside of the physical building, including temporary detention facilities. The majority of these systems are connected to digital recording equipment.

In addition to these systems, the 2nd Precinct has wired and wireless surveillance cameras deployed at designated locations at the oceanfront. These cameras provide a video feed to the video surveillance room at the 2nd Precinct, to view and record activity at, or near these locations.

Each of these systems with recording capabilities is designed to record video files directly to a DVR, or hard drive. When the recording system reaches its storage capacity the oldest files are overwritten with the new files.

The designated command video file administrator shall be responsible for all recorded video files from each video camera. The video file administrator shall be responsible for maintaining these video files and providing access to these files for authorized personnel. The video file administrator shall be responsible for copying any required video files in their entirety to DVD for an officer requiring the video file as evidence for court. The recorded DVD will then be vouchered and submitted to Property and Evidence.

Property and Evidence shall maintain all submitted tapes or DVDs as evidence until the case is fully adjudicated to its final conclusion.

Videotapes or DVDs that contain footage of significant criminal activity that require copying for dissemination in furtherance of the investigation or prosecution of the case may be copied and disseminated by the Property & Evidence Unit. The copy(s) will be made of the entire videotape or DVD and be certified as exact duplicates of the original and will be issued in the same manner as all other videotapes or DVDs held as evidence. The original of a videotape or DVD that has been duplicated will not be checked out except for court or unusual circumstances. Only the Chief of Police, or designee, may authorize duplication of less than a complete videotape or DVD.

Presentation of Video Evidence in Court

Officers may include the videotapes or DVDs as corroborative evidence when presenting a case in court. This will only require the officer to testify that he/she has reviewed the videotape or DVD and that the recording accurately depicts the incident(s) as they occurred. (All officers who were present at the incident may testify using the videotape or DVD; they do not have to be the officer that actually made the recording.) In those cases where the officer intends to present the videotape or DVD as evidence, the court should be notified in advance so arrangements can be made for a monitor and video player to be present in the courtroom.

In those instances where officers have a video recording as part of their evidence, all involved attorneys shall be made aware, prior to trial, that the incident was recorded on videotape, DVD or removable media storage device. In any case where an officer has brought charges against an individual, and later learned that the video recording contains evidence that may be exculpatory in nature (evidence tending

to establish a criminal defendant's innocence), the officer shall immediately contact his supervisor for guidance regarding the proper disposition of the charges. If the case is being handled by the City/Commonwealth's Attorney, they shall also be notified immediately.

When police officers prosecute a case without the benefit of a Commonwealth Attorney, the following information will guide the officers handling of requests from a defense attorney. Should an officer receive any motion or subpoena related to any case prosecuted by the Commonwealth Attorney's Office, that motion or subpoena must be forwarded to the appropriate CWA as soon as possible.

Personal Video Recording Devices

It is the policy of the Virginia Beach Police Department that no member will carry non-issued video recording devices on duty or while engaged in official duties. The use of cell phones and PDA's that are capable of video or DVR recordings would not be covered under this restriction. However, if a situation arises of an exigent nature that causes a member to utilize a cell phone or PDA to capture events the department member will notify his or her supervisor of the evidence captured on the personal device; a notation will be entered into the written case report of the presence of the evidence and the Department will make arrangements to transfer the stored data from the personal device to a DVD or like medium.

Personal Audio Recording Devices

Members may carry their personal audio recording devices while on duty.

All recordings, video and/or audio, made **on-duty** are subject to FOIA the Library of Virginia's retention schedule, discovery motions, and to mandatory disclosure to defendants/defense attorneys if exculpatory under the provisions of *Brady v. Maryland* (1963). Captured data from personal recording devices or cameras, as long as they are used on duty by police personnel, would be treated as if they were captured with departmental property. This policy does not preclude a member from taking photographs that are intended to capture historic and personal memorabilia of fellow members that would clearly not be used in any official capacity.

Definitions

Exculpatory Evidence: Any evidence favorable to the defense and material to either guilt or punishment. Simply stated, this is any evidence (such as audio/video recordings, documents, and statements made by 3rd parties/witnesses, *but not their names*) that supports the defense's claim of innocence or would result in a lesser punishment.

Motion for Discovery: A Motion for Discovery is a legal paper filed by the defendant or the defense attorney (the defense) that requires an officer to provide the requested information or material listed in the legal paper. Neither a verbal request, nor a letter, nor a Subpoena Duces Tecum may be used in lieu of a Motion for Discovery.

Subpoena Duces Tecum (SDT's): A writ (court order) commanding a person to send specified documents or materials to the court or the defense by a specified date, subject to the court's penalty for

failure to comply. In Virginia, SDT's may be issued by an attorney of record for the specified proceeding (case).

Freedom of Information Act (FIOA) Request: ANY request (made verbally or in writing) for documents (to include a letter (vice a Motion) from defense requesting electronic documents, videos, etc.) made by any Virginia resident (except prisoners.)

Required Actions by Officers

Exculpatory Evidence: No motion from the defense is required if the officer has any evidence that clearly supports a claim of innocence or clearly would result in a lesser punishment (such as resulting in a conviction for a lesser included offense), then the officer/prosecutor is under an absolute duty to provide such evidence even if the defense has not made a request for the information or materials.

Defense may submit a Motion for Exculpatory Evidence to the officer and the court that specifies the documents or materials they are seeking. The requested information or materials must be presented if it is favorable to the defense and tends to support a claim of innocence or may result in a lesser punishment.

Motion for Discovery when Officer is Prosecuting Case: Generally, the officer and the appropriate Clerk of Court is provided with a copy of the Motion. Discovery laws compel the prosecution (in these instances, the officer) to produce specified information or material upon a Motion for Discovery by the defense.

The law regarding discovery in a General District Court misdemeanor case (the only type of cases where an officer may present a case to the court without a CWA) is governed by Rules of the Supreme Court, Rule 7C:5.

The Virginia Beach General District Court published a **Standard Discovery Order** (see attached Sample) that tracks Rule 7C:5. If an Officer receives such an Order or any other Motion for Discovery in a case being prosecuted by an attorney, those documents are to be forwarded to the attorney immediately.

When an Officer receives a Standard Discovery Order, the Officer must:

1. Sign the Order on the line under "Seen and Agreed" and send it back to the General District Court Clerk within 5 (five) days. The initial receipt of this Order constitutes a Motion for Discovery.
2. Reply to the Standard Discovery Order using the PD Form 279.
3. If an Officer is sent the Standard Discovery Order that he/she previously signed AND it is now signed by a Judge, then the officer must provide a copy of the Defendant's criminal (criminal cases) or traffic (traffic cases) record to the defense attorney. Regarding production of the criminal/traffic records, be sure to check which provision the Judge initialed.

When an Officer receives any other form of “Motion for Discovery” in a GDC criminal or traffic case, regardless of what information/documentation is requested in the Motion, he/she should respond using the PD Form 279, providing only those statements made by the Defendant to law enforcement officers.

NOTE: Should an officer receive a motion for discovery that includes a request for a copy of the in-car camera video in a DUI case, the following statement should be added to the PD Form 279 when responding to the motion: “You have requested a copy of the in-car camera video. Inasmuch as the video is not being offered into evidence by me during the trial of your client, it is not subject to Rule 7C:5. However, if you believe the video may contain exculpatory evidence, you may contact the precinct at (phone number) to make arrangements with the video file administrator to view the recording during normal business hours.” If after viewing the video, the attorney for the accused believes that exculpatory evidence exists, the attorney may request a copy from the video file administrator.

Subpoena Duces Tecum (SDT’s): A SDT may not be used against a party-opponent (ie, to obtain evidence from the prosecuting police officer) in a criminal case. Should you receive a SDT from the defense for a case you are prosecuting, you must forward it to the Office of Professional Standards *immediately* for resolution. The prosecuting officer does not have to provide any response to a SDT from defense.

Freedom of Information Act (FOIA) Requests: The City of Virginia Beach (and its employees) has only 5 days to respond to a FOIA request. Therefore, you must forward the request, along with any responsive documents you have in your possession, to the Office of Professional Standards *immediately*.

SAMPLE**VIRGINIA: IN THE GENERAL DISTRICT COURT OF THE CITY OF VIRGINIA
BEACH**

COMMONWEALTH OF VIRGINIA (or City), Plaintiff,

v.

Case No: _____

_____, Defendant

STANDARD DISCOVERY ORDER

THIS MATTER came before the Court on the Defendant's motion for discovery pursuant to Rule 7C:5 of the rules of the Supreme Court of Virginia and § 19.2-187 of the Code of Virginia, annotated, and constitutional and case law authority providing for the disclosure of certain information.

It is therefore **ORDERED** that the prosecuting attorney, or if none, the law enforcement officer prosecuting the defendant (hereinafter collectively referred to as the "prosecution"), shall permit the attorney for the Defendant, to inspect and copy or photograph all of the following items:

1. Any relevant written or recorded statements or confessions made by the Defendant, or copies thereof, or the substance of any oral statements or confessions, made by the Defendant to any law enforcement officer, made in connection with the offenses for which the Defendant stands charged.
2. Any criminal or traffic record of the Defendant.
3. Any actual or potentially exculpatory information known to law enforcement agencies involved in the prosecution of this case.

Therefore, it is **ORDERED** that:

The prosecution shall allow the attorney for the Defendant to inspect and copy or photograph the information Ordered herein, ____ (Judge Initials) at a mutually agreed place, within ten (10) days after receipt of a copy of the Order (signed by a judge), **OR** ____ (Judge Initials) the information and/or examination shall take place in the courtroom where the case is set for trial, on the trial date.

[BE SURE TO CHECK WHICH PROVISION THE JUDGE INITIALS]

ENTERED this ____ day of _____, 2011

Judge

I ask for this:

_____, p.d. [Defense Attorney signs here]

Seen and agreed:

_____ [Police Officer signs here]